

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

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76-7112

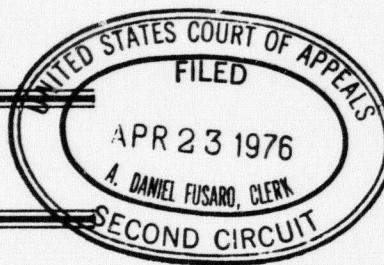
United States Court of Appeals
FOR THE SECOND CIRCUIT

EDWARD KENNIS and MARION KENNIS,
Plaintiffs-Appellants,
against

WALLENPAUPACK LAKE ESTATES,
Defendant-Appellee.

On Appeal from the United States District Court
For the Southern District of New York

APPENDIX



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APPENDIX

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
3-27-75	Filed Complaint, Issued Summons.
4-16-75	Filed summons and return—served: Wallenpau- pack Lake Estates by F. H. Roberts on 4-08-75
4-29-75	Filed Answer of deft. to the complaint (B.B.W.)
7-23-75	Pre-Trial Conference Held by Hartenstein, U. S. Mag.
10-24-75	Filed Pltff's Affidavit and Notice of Motion for an order to amend complaint, for dismissal of deft's affirmative defenses and summary judg- ment Ret: 11-3-75.
10-24-75	Filed Pltff's Memorandum of Law in support of motion.
10-29-75	Filed stip & order that pltffs' motion is ad- journed from 11-3-75 to 11-17-75. So ordered— Frankel, J.
11-17-75	Filed deft's opposition to motion for summary judgment.
11-17-75	Filed deft's memorandum in opposition.
11-20-75	Filed memo endorsed on document No. 4—the motion is granted only to the extent of allowing the complaint to be amended as requested. Ex- cept for that, the motion is denied. So ordered— Frankel, J. (m/n)
12- 3-75	Filed Pltffs' Notice of motion for reargument of order fld 11-19-75 . . . ret 12-15-75 at 9:30 AM.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
12- 3-75	Filed Pltffs' Memo of Law in support of its motion for reargument.
12- 4-75	Filed Memo-End. & Order on motion of 12-3-75. Motion denied. So Ordered, Frankel, J. m/n
12-29-75	Filed pltffs amended complt with demand for trial by jury of six.
1- 5-76	Filed defts amended answer to pltffs amended complt.
2- 2-76	Fld Pltff's Memo in opposition to defts' motion to dismiss.
2- 6-76	Filed pltffs notice & request for original documents as evidence.
2- 6-76	Filed pltffs requests for admissions of facts & genuineness of document.
2-10-76	Filed Memorandum-Decision No. 43870. Deft has moved to dismiss the complt upon the ground, inter alia, of lack of diversity jurisdiction. For the reasons indicated, the motion is granted & the complt is dismissed. So Ordered, Frankel, J. m/n
2-23-76	Filed pltffs notice of motion for reargument. Ret. 3-2-76.
2-23-76	Filed pltffs memo of law on motion for reargument.
2-23-76	Filed pltffs affdvt & notice of motion for leave to serve & file an amended complt. Ret. 3-2-76
2-23-76	Filed pltffs memo of law re leave to file an amended complt.

Relevant Docket Entries

<i>Date</i>	<i>Proceedings</i>
3- 8-76	Filed pltffs notice of appeal to the USCA from the order dismissing the complt on 2-10-76. Copy sent to att'y for def't. Benjamin B. Wesley, 86-14 Forest Parkway, Woodhaven, N.Y. 11421.
3-22-76	File Memorandum & Order No. 44099. Pltffs have moved for reargument of the order dismissing the complt & for leave to amend in an effort to state a federal claim. The motion to reargue is summarily denied. The second motion has merited close attention, but it too is found on balance to be insufficient. For the reasons, indicated, both motions are denied . . . So Ordered, Frankel, J.
4- 8-76	Filed Notice to the USCA that the original record on appeal has been Certified & transmitted to the USCA.

Endorsement-Memorandum, dated November 19, 1975

Kennis v. Wallenpaupack Lake Estates, 75 Civ. 1550

Motion for Summary Judgment

Endorsement

There are serious questions of fact affecting both jurisdiction and the merits. Accordingly, the motion is granted only to the extent of allowing the complaint to be amended as requested. Except for that, the motion is denied.

So ordered.

MARVIN E. FRANKEL
U.S.D.J.

Dated: New York, New York
November 19, 1975

**Memorandum Decision by Frankel, U.S.D.J.
dated February 10, 1976**

FRANKEL, D.J.

Defendant has moved to dismiss the complaint upon the ground, *inter alia*, of lack of diversity jurisdiction. For the reasons set forth below, the motion is granted.

The relevant jurisdictional facts now seem to be undisputed.¹ Plaintiffs, both New York citizens, are suing defendant Wallenpaupack Lake Estates, a "Pennsylvania"² joint venture, for the alleged breach of contracts under which plaintiffs purchased two parcels of land in Pennsylvania from defendant. One of the two members of the joint venture is Poco-Del Development Co., a Pennsylvania limited partnership, composed of, among others, one Frederick H. Roberts, a general partner who resides in New York. Jurisdiction of the action is predicated upon 28 U.S.C. §1332(a), the diversity statute.

Although the citizenship of a corporation for diversity purposes is determined by its places of incorporation and principal business (28 U.S.C. §1332(c)), the citizenship of partnerships and unincorporated associations for purposes of the diversity jurisdiction³ is determined by the citizen-

¹ Plaintiffs, after an unsuccessful motion of their own for summary judgment, acknowledged the facts upon which the instant motion is decided.

² It is alleged that Wallenpaupack Lake Estates was created and organized under the laws of Pennsylvania and has its principal office there. Whatever that may mean for other purposes, it is irrelevant to the "citizenship" of that venture for purposes of diversity jurisdiction.

³ The primary cases relied upon by plaintiffs on this issue, both involved citizenship for venue purposes and are distinguishable on that ground alone. See e.g., *Feldmann Insurance Agency v. Brodsky*, 195 F. Supp. 483, 485 (D. Md. 1961).

Memorandum Decision by Frankel, U.S.D.J.
dated February 10, 1976

ship of the individual members of such entities, no matter what state's law "creates" them and whether or not they are suable entities under state law.⁴ See, e.g., *Great Southern Fire Proof Hotel Company v. Jones*, 177 U.S. 449 (1900); *Colonial Realty Corporation v. Bache & Co.*, 358 F.2d 178, 183 (2d Cir. 1966); *Baer v. United Services Automobile Association*, 503 F.2d 393 (2d Cir. 1974).

For most purposes, including determining citizenship for diversity purposes, a joint venture is treated like a partnership. See *Stuart v. Al Johnson Construction Co.*, 236 F. Supp. 126 (W.D. Pa. 1964); *Carson Construction Co. v. Fuller-Webb Construction*, 198 F. Supp. 464 (D. Mont. 1961).⁵ Therefore, the citizenship of the members of the venture determines whether diversity is present. Where, as here, one of those members is itself a partnership, the citizenship of the partners must in turn be as-

⁴ Fed. R. Civ. P. 17(b) provides that the capacity of a non-corporate entity to be sued in a diversity action is determined by "the law of the state in which the district court is held. . ." New York permits partnerships to be sued in the partnership name alone. NYCPLR §1025. This rule has also been held to apply to joint ventures. See *Pedersen v. Manitowoc Company*, 25 N.Y.2d 412, 419, 306 N.Y.S.2d 903, 909 (1969). Such characterization as a jural entity, however, is irrelevant to determining diversity citizenship. See, e.g., *Woodward v. D. H. Overmyer Co.*, 428 F.2d 880, 883 (2d Cir. 1970), cert. denied, 400 U.S. 993 (1971); *Weinfeld v. Paine, Webber, Jackson and Curtis*, 191 F. Supp. 750 (D. Mass. 1961).

⁵ Although the Second Circuit does not appear to have ruled on this precise issue, it seems obvious that to extend greater rights of diversity citizenship to joint ventures than are available to partnerships would be error under the cases cited above which make formal incorporation the touchstone of "entity citizenship." See *Carson Construction Co. v. Fuller-Webb Construction, supra*, at 468.

Memorandum Decision by Frankel, U.S.D.J.
dated February 10, 1976

certained to determine the citizenship of that member. Doing that here, it is apparent that complete diversity is lacking. Both plaintiffs and Frederick Roberts, the general partner of Poco-Del Development Co., are citizens of New York. Hence, the complaint must be dismissed for lack of subject matter jurisdiction.⁶

⁶ It has been stated that the citizenship of a partnership is determined only by the citizenship of partners actually joined in an action or who are indispensable to it under Rule 19. See *Jones Knitting Corporation v. A. M. Pullen & Company*, 50 F.R.D. 311, 315 (S.D. N.Y. 1970). While it is true that unjoined limited partners who are not proper parties to an action are not counted in the diversity equation, it does not appear that any others may be disregarded for diversity purposes. See *Colonial Realty Corporation v. Bache & Co.*, 358 F. 2d 178, 183 (2d Cir. 1966). It would seem that indispensability under Fed. R. Civ. P. 19 and citizenship for diversity purposes are separate and cumulative tests. It is very unlikely that all of the members of a union are indispensable to an action against the union, and yet all members are counted in determining the union's citizenship. See *Steelworkers v. R. H. Bouligny, Inc.*, 382 U.S. 145 (1965). See also *United States v. St. Louis-San Francisco Ry.*, 52 F.R.D. 276 (E.D. Mo. 1971), rev'd on other grounds, 464 F.2d 301 (8th Cir. 1972), cert. denied, 409 U.S. 1107 (1973) (where jurisdiction predicated on federal question, union members not indispensable to action by United States against union). Similarly, the individual partners are presumably not indispensable parties to actions involving the partnership when jurisdiction is based on federal law. See 7 C. Wright and A. Miller, §1613, at 133 (1970). On the other hand, it would seem that the Pennsylvania limited partnership (with its New York general partner) would be an indispensable party in any action involving the instant claim that might have been brought against any other member of the venture alone. See, e.g., *Federal Resources Corp. v. Shoni Uranium Corp.*, 408 F.2d 875 (10th Cir. 1969); *Eastern Metals Corp. v. Martin*, 191 F. Supp. 245 (S.D.N.Y. 1960).

*Memorandum Decision by Frankel, U.S.D.J.
dated February 10, 1976*

One final point should be noticed. The instant motion was made on the eve of trial, a course of proceeding that the court views with disfavor. Responding to the motion, plaintiffs filed the usual memorandum, and then a subsequent letter which, in brief and conclusory form, said the "court also has jurisdiction pursuant to Title 15 U.S.C.A. Sections 1703(2)(c) and 1719, which are part of what is referred to as the Interstate Land Sales Full Disclosure Act." This casual form of proposed amendment on a key aspect of the case is unacceptable. It is far from clear that the belated suggestion of a new jurisdictional theory has merit; the case has thus far looked, and continues to look, like a simple one for breach of contract. In any event, the letter will not be considered as an amendment to the complaint. The dismissal of the case on the grounds heretofore stated leaves plaintiffs what should have been their preferred remedy to begin with, namely, an action on their contract in state court.

For the reasons above stated, the complaint is dismissed. It is so ordered.

U.S.D.J.

Dated, New York, New York
February 10, 1976

Notice of Motion to Amend

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert P. Whelan, sworn to on the 20th day of February, 1976, the pleadings heretofore had herein and the proposed amended complaint hereto annexed, plaintiff will move this Court at the Courthouse, Foley Square, New York, N.Y. before the Honorable Marvin E. Frankel, United States District Judge, on the day of March, 1976 at 9:30 a.m. or at such time selected by him for an order pursuant to Rule 15(a) of the Federal Rules of Civil Procedure permitting plaintiffs to serve and file an amended complaint in the form annexed hereto, and for such other relief as to the Court may seem proper.

Dated: New York, N.Y.
February 20, 1976

Yours, etc.,

ROBERT P. WHELAN
Attorney for Plaintiffs
80 Pine Street, 27th Floor
New York, N.Y. 10005
(212) 422-0222

To:

BENJAMIN B. WESLEY, Esq.
Attorney for Defendant
86-14 Forest Parkway
Woodhaven, N.Y. 11421
(212) 296-4300

**Affidavit of Robert P. Whelan in Support of Motion
for Leave to Amend**

STATE OF NEW YORK }
COUNTY OF NEW YORK }ss.:

ROBERT P. WHELAN, being duly sworn, deposes and says:

I am the attorney for plaintiffs herein and fully familiar with the facts herein.

Relying on the prior decision of the Court dated November 19, 1975 that there was a question of fact herein as to the propriety of diversity jurisdiction, deponent, in preparation for trial herein, caused a subpoena duces tecum to be served upon Frederick H. Roberts, referred to in the Court's decision, dismissing the complaint for lack of such jurisdiction.

Such service was made prior to knowledge of the Court's decision and in preparation for trial scheduled for February 13, 1976.

After dismissal, deponent began looking into federal question jurisdiction as a basis for preserving jurisdiction and after an examination of Chapter 42 of 15 U.S.C. Sec. 1701 et seq., prepared the proposed amended complaint which, it is submitted, is harmonious therewith.

Deponent had intended to move to amend in court, on trial, pursuant to Rule 15 F.R.C.P., even before knowledge of said dismissal. The Court's decision alludes to preliminary efforts on behalf of plaintiffs in that regard.

In said preparation for trial, immediately on the eve thereof, deponent interviewed one of the plaintiffs. I know of my own knowledge, although specific reference to said Chapter 42 was not made in said interview, that neither of plaintiffs was ever the least bit aware of that

*Affidavit of Robert P. Whelan in Support of Motion
for Leave to Amend*

which was stated in the affirmative defense of defendant when its original answer was filed some time after March 27, 1975, as alleged in the proposed amended complaint, namely, that there was a well-understood practice that the construction of sewers and utilities depended on factors which might extend their completion beyond the scheduled date.

WHEREFORE, it is prayed that the motion for leave to file the amended complaint be granted.

ROBERT P. WHELAN

(Sworn to by Robert P. Whelan, February 20, 1976).

Plaintiffs' Proposed Amended Complaint

Plaintiffs, for their amended complaint, by their attorney, Robert P. Whelan, allege:

FOR A FIRST CAUSE OF ACTION

1. Plaintiffs are husband and wife and both are citizens of the State of New York.
2. Defendant is a joint venture.
3. Defendant is, and at the time of commencement of this action, was composed of Poco-Del Development Co., a Pennsylvania Limited partnership whose principal address is Paupack Township, Pennsylvania and Inter-American Catholic Charities, Inc., a Delaware non-profit corporation. At the time of the commencement of this action, the partners of said Poco-Del Development Co. were Frederick H. Roberts, a general partner, residing at 2 Robbins Lane, Lake Success, New York, and Joseph McDonald, a limited partner, residing in Flushing, New York.
4. Wallenpaupack Lake Estates has a sales office at 975 Old County Road, Westbury, Long Island, N.Y.
5. At the time of commencement of this action, Wallenpaupack Lake Estates was a subdivision of land located in Wayne County, Hawley, Pennsylvania as defined in Title 15 U.S.C. Section. 1701(3).
6. On or about October 21, 1973, Poco-Del Development Co., as the developer of said subdivision, had on file a Property Report pursuant to Chapter 42 of Title 15 U.S.C. with the U.S. Department of Housing and Urban Development.

Plaintiffs' Proposed Amended Complaint

7. The jurisdiction of this court is founded on said Chapter 42 of Title 15 U.S.C., specifically Section 1719 thereof.

8. Annexed hereto as *Exhibit 1* is a true copy of said Property Report so on file with said U.S. Department at said time.

9. By deeds dated October 21, 1973, defendant conveyed to plaintiffs, as tenants by the entireties, lot 169 section 7 and lot 170 section 7 of Wallenpaupack Lake Estates, Wayne County, Pennsylvania, and said deeds were recorded in the Wayne County Recorder's Office on November 2, 1973 in Book 301, pages 274 to 280. Annexed as *Exhibits 2a and 2b* are true copies of the deeds by which said conveyances were made.

10. Annexed hereto as *Exhibits 3a, 3b, 3d and 3e* are, respectively: (1) a copy of the sales agreement concerning said lot 169, (2) a copy of the sales agreement concerning said lot 170, (3) a copy of a promissory note executed by plaintiffs to defendant in the sum of \$744.50, (4) a copy of a promissory note executed by plaintiffs to defendant in the sum of \$6,200.00, and (5) a copy of a personal loan note and disclosure statement in the sum of \$30,063.60 given by plaintiffs to defendant concerning the alleged conveyances.

11. At or prior to the time when said deeds were delivered to plaintiffs as alleged in Paragraph 9, and said documents were executed, as alleged in Paragraph 10, defendant delivered to plaintiffs a copy of said Property Report.

Plaintiffs' Proposed Amended Complaint

12. Annexed hereto as *Exhibit 4* is a true copy of a letter from Joseph Grainger, attorney, addressed to Edward Kennis, plaintiff herein, dated November 7, 1973, a copy of which said letter was forwarded by said Edward Kennis to Mr. Fred Roberts, Wallenpaupack Lake Estates, by letter dated November 9, 1973.

13. Annexed hereto as *Exhibit 5* is a true copy of said letter of November 9, 1973 from plaintiff, Edward Kennis, to said Mr. Fred Roberts.

14. Annexed hereto as *Exhibit 6* is a true copy of a letter from F. H. Roberts, Director of Sales of defendant, dated December 24, 1973, addressed to Mr. Edward Kennis, plaintiff, in response to said letters of November 7, 1973 and November 9, 1973, heretofore referred to as *Exhibits 1 and 2*.

15. Annexed hereto as *Exhibit 7* is a true copy of a letter dated September 17, 1974 from attorneys for plaintiffs addressed to defendant, Att. F. H. Roberts, whereby a demand was made on behalf of said plaintiffs for a return of the purchase price for said property.

16. Annexed hereto as *Exhibit 8* is a true copy of a letter dated October 2, 1974, from said F. H. Roberts addressed to said attorneys for plaintiffs advising said attorneys, among other things, that the water lines and sewer lines as well as the roads and utilities in connection with lot _____ and 170, section 7, conveyed to plaintiffs as aforesaid, _____ will not be completed until the end of 1976.

17. Said Property Report, pursuant to 15 U.S.C. Sec. 1707(a) and Sec. 1705(5) states in answer No. 10 that:

Plaintiffs' Proposed Amended Complaint

"It is estimated the system may not be completed until late in 1974" with reference to the sewer and water systems. No such statement is made with regard to the electric, gas and utility systems.

18. At the time when defendant served its answers to the original complaint, some time subsequent to March 27, 1975 when the same was filed, defendant interposed the following third defense:

"At all times mentioned in the complaint, there existed in the land development business a well-established and well understood practice to the effect that the construction of sewers, roads and utilities in a new development were dependent on various factors such as terrain, soil and rock conditions, weather, availability of materials, etc., as plaintiff well knew. The contract set forth in the complaint was made by plaintiffs and defendant with reference to and knowledge of such practice. In accordance with such practice plaintiff was advised that necessary blasting, etc. had slowed the construction of the sewer system, roads and other utilities to the point that completion was estimated to be late in 1976. In this regard, time was not the essence of the aforesaid contract."

19. The interposition of said defense with the first occasion on which plaintiffs knew or could have known of such qualification as to the installation of said sewer, road and water facilities.

20. In light of the foregoing said Property Report and on information and belief, the Statement of Record on which it is based either contain untrue statements of ma-

Plaintiffs' Proposed Amended Complaint

terial facts or omit to state material facts required to be stated therein.

21. Said defendant, on or about October 31, 1973, assigned said personal loan note to Merchants National Bank of Allentown which on November 2, 1973 entered judgment thereon in said sum in the Wayne County, Pennsylvania, courthouse. A copy of said judgment is annexed hereto as *Exhibit 9*.

22. Annexed hereto as *Exhibit 10* is a copy of a letter addressed to the attorney for plaintiffs from said Merchants National Bank of Allentown stating that the balance due as of February 6, 1976 on said loan is \$20,400.30 and that the payoff is \$16,348.33 until March 5, 1976.

23. When the complaint herein was filed in March 27, 1975, plaintiffs had made 16 monthly payments of \$357.90 pursuant to said personal loan note, for a total of \$5,726.40, in addition to the total of \$7,144.50 already paid on the execution of said documents, for a total of \$12,870.90.

24. Since the commencement of this action to and including February 1976, plaintiff has been required to maintain eight additional monthly payments of \$357.90 for a total of \$2,863.20 and said payments are continuing in accordance with the transaction alleged.

25. In addition thereto, plaintiffs have been required to expend the sum of approximately \$1,250.00 for property taxes and assessments during the period from the time of said transaction to December 1975.

26. There is due and owing to plaintiffs as of February 1975, therefore, the sum of \$16,984.10 plus \$16,348.33

Plaintiffs' Proposed Amended Complaint

sufficient to satisfy the said balance due to the Merchants National Bank of Allentown as of March 5, 1976 less the salvage value of said lots plus interest, costs and reasonable attorney's fees, subject to any changes at judgment.

27. Plaintiffs have demanded payment from defendant pursuant to the foregoing but the same has been refused.

FOR A SECOND CAUSE OF ACTION

28. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 27 heretofore set forth.

29. On or about October 21, 1973, to and including the present date, Frederick H. Roberts was Sales Director of Wallenpaupack Lake Estates.

30. On or about October 21, 1973, legal title to the property constituting said subdivision was held by two (2) Trustees, and their designated alternates, for said Inter-American Catholic Charities, Inc., a Delaware corporation, which was the beneficial owner of the property. A portion of the subdivision property was deeded to said Trustees by Guanacaste, Inc., a Pennsylvania corporation and said Inter-American Catholic Charities, Inc. on said date had a Power of Attorney from said Guanacaste, Inc. to act on its behalf in any and all matters.

31. The jurisdiction of this court is founded on 28 U.S.C. Sec. 1332(a).

WHEREFORE, plaintiffs demand judgment of defendant in the sum of \$33,332.43 plus costs and disbursements and

Plaintiffs' Proposed Amended Complaint

interest from October 21, 1973, plus reasonable attorney's fees.

ROBERT P. WHELAN
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80 Pine Street, 27th Floor
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(212) 422-0222

**Exhibit 1 Annexed to Proposed Amended Complaint
(Property Report)**

[PHOTOSTATS]

(Opposite) 

WALLENPAUPACK LAKE ESTATES

PROPERTY REPORT

NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND
SALES REGISTRATION, U. S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

This report is not a recommendation or endorsement of the offerings herein by the Office of Interstate Land Sales Registration, nor has that office made an inspection of the property nor passed upon the accuracy or adequacy of this report or any promotional or advertising materials used by the seller.

It is in the interest of the buyer to inspect the property and carefully read all sale documents.

Prospective buyers are notified that unless they have received this property report prior to, or at the same time they enter into a contract, they may void the contract by notice to the seller.

Unless a buyer or lessee acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract he may revoke his contract within 48 hours from the signing of his contract, if he has received the property report less than 48 hours prior to signing such contract.

1. Name of Developer:

Poco-Del Development Co.
P. O. Box 67
Greentown, Pa. 18426

2. Name of Subdivision:

Wallenpaupack Lake Estates
Paupack Township, Wayne County, Pa.
(Mailing address Box 67, Greentown, Pa. 18426)

(a) Effective date of Property Report: November 16, 1972.

(b) This offering consists of 1441 lots remaining from original offering.

3. List names and populations of surrounding communities and list distances over paved roads to the development.

Name of Community	Population	Distance over Paved Roads	Unpaved Roads	Total
Greentown	2,000	7 miles	0	7
Newfoundland	1,359	11 miles	0	11
Stroudsburg	15,000	35 miles	0	35
Mt. Pocono	900	22 miles	0	22
Scranton	111,000	25 miles	0	25
Honesdale (County seat of Wayne County)	6,000	20 miles	0	20

4. If periodic payments are to be made by a buyer (as in the case of installment sales contract) complete all items under this paragraph
4. If not, enter "Not Applicable".

Attached to this Property Report is a schedule of developers restrictions entitled Schedule "A". It is a part of this Property Report and is also referred to in the contract.

Ans. Not applicable because a deed giving buyer absolute title will be delivered at settlement and can be recorded immediately, and absolute title will pass to buyer at settlement. If the buyer is to pay any portion of the purchase price in installments the buyer's note will be discounted with a bank or lending institution with recourse, and risk will remain with Wallenpaupack Lake Estates and not with the buyer, who has already received a deed and absolute title.

(a) Will the sales contract be recordable?

Ans. No, because deed for absolute title will be delivered to the buyer at settlement.

(b) In the absence of recording, could the developer's creditors or others acquire title to the property free of any obligation to deliver a deed to the buyer when final payment has been made under the sales contract?

Ans. No, because absolute title at settlement will be delivered to the buyer.

(c) What provision, if any, has been made for refunds if buyer defaults?

Ans. None, because buyer's obligation is limited to the payment of the judgment note delivered to seller at settlement.

(d) State prepayment penalties or privileges, if any.

Ans. Any unpaid balance may be paid, at any time, without penalty and any unearned finance charge will be refunded based on the Rule of 78's as approved by the American Bankers Association.

5. Is there a blanket mortgage or other lien on the subdivision or portion thereof in which the subject property is located? Yes or No? If yes, list below and describe arrangements, if any, for protecting interests of the buyer or lessee if the developer defaults in payment of the lien obligation. If there is such a blanket lien, describe arrangements for release to a buyer of individual lots when the full purchase price is paid.

Ans. Yes. There is an encumbrance affecting all lots in Section 1, 2, 6 and 7 and part of the lots in Section No. 3. With regard to lots so encumbered at the time of final recording of the deed a release is obtained from the mortgagee after the Developer pays the mortgagee an agreed upon release fee. The releases are recorded at the Wayne County Courthouse at the same time as the deed is recorded in the name of the purchaser. After recording of the deed and the release, the property described herein is only subject to the lien, if any, placed against the property by the purchaser to secure the financing of the sale, if it is so financed by the purchaser. The purchaser thus has a clear and insurable title.

6. Does the offering contemplate leases of the property in addition to, or as distinguished from, sales?

Ans. Under this offering no lots will be leased.

7. Is buyer or lessee to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision (a) before taking title or signing of lease, or (b) after taking title or signing of lease? If either answer is yes, complete the schedule below.

Ans. (a) The lot purchaser pays no taxes, special assessments or

payments of any kind for the maintenance of common facilities in the subdivision before taking title. (b) The lot purchaser after receiving absolute title at settlement pays real estate taxes thereafter assessed against lot, and the payments as hereafter set forth as estimated annual charges which would be:

Special assessments - None.

Real estate taxes - Average of \$70.00 to \$85.00 per lot, depending upon value of lot. Total tax made up of two billings, one issued in March and the last in August of each year. Purchasers are advised to consult with local taxing authorities.

Payments to Property Owners Association - \$72.00.

Water - \$24.00 when available, \$48.00 when connected.

Sewer - \$48.00 when available, \$60.00 when connected.

The annual charge for water and sewer will remain until the systems are turned over to the Property Owners Association or to a Utility Company approved by the Pennsylvania Public Utility Commission. Such rates may be subject to change from time to time in accordance with the Public Utility Law, if applicable.

There will be an annual assessment of \$72.00 per year, payable to the Wallenpaupack Lake Estates Property Owners Association, to be used for the maintenance of roads, common areas, and other community interest services required by the Association. All recreational facilities will be conveyed to the aforementioned Property Owners Association on or before the completion of the project, and in any event no later than 1976.

8. (a) Will buyer's down payment and installment payments be placed in escrow or otherwise set aside? Yes or no? If yes, with whom? If no, will title be held in trust or in escrow?

Ans. Yes. On financed sales the buyer's down payment will be held in escrow in the Real Estate Broker's escrow account at the North-eastern National Bank of Pennsylvania, East Stroudsburg, Pa. These funds will not be released by the Broker to the seller until proof of transfer of title to the purchaser is presented. Installment payments are not placed in the escrow account since they are made directly to the bank or financing institution by the purchaser only after title is conveyed to the purchaser. In cash sales, all moneys for the purchase of the lot are placed in the same Real Estate Broker's escrow account and not released to the seller until proof of transfer of title to the purchaser is presented.

(b) Except for those property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, will buyer receive a deed free of exceptions? Yes or no? If no, list all restrictions, easements, covenants, reservation and their effect upon buyer.

Attached to this Property Report is a schedule of developers restrictions entitled Schedule "A". It is a part of this Property Report and is also referred to in the contract.

Ans. No. Each purchaser of a lot will receive a Deed, free of all restrictions, easements, covenants and reservations affecting title other than the easements for utilities and other than restrictions imposed by Wallenpaupack Lake Estates for the common benefit of all lot owners, which restrictions and easements are recorded in Schedule "A" mentioned above. Schedule "A" is furnished to the purchaser at the time of sale and is made a part of the Deed when title is

transferred to the purchasers and as such is recorded in the Office of the Recorder of Deeds for Wayne County, at Honesdale, Pa.

(c) Buyer should determine permissible uses of the property from local zoning authorities.

(d) List all existing or proposed unusual conditions relating to the location of the subdivision and to noise, safety or other nuisances which affect or might affect the subdivision.

Ans. Although not considered a nuisance, Wallenpaupack Lake Estates does plan the installation of an ultra-modern "package" sewage treatment plant with an initial capacity of 100,000 gallons per day. This plant will be partially enclosed and all major units will be below grade. The area around same will be graded and landscaped with screening trees. Estimated to cover area of approximately 100' x 300'. Our consulting engineers, VEP & Co., Inc., inform us that these plants operate without creating nuisance odors in the area when properly operated. Careful plans are being made to insure such proper operation. Lots #387 - 391 in Section 1 will be the location for the sewage treatment plant. Such installation will be with the approval of the Pennsylvania Department of Environmental Resources.

9. (a) List all recreational facilities currently available. (e.g. - television, sports, beaches, etc.). State any cost or assessments to buyer or lessee.

Ans. Existing recreational facilities currently available include: a private camping area; a seven stall riding stable; a teen center with bowling lanes; outdoor swimming pool; a 25 acre private lake for swimming, fishing and ice skating, with water front access areas; and 16 mile long Lake Wallenpaupack for swimming, power boating, water skiing and fishing. All of these facilities are available to lot owners by the payment of the annual dues to the Property Owners Association.

(b) If facilities are proposed or partly completed, state promised completion date, provisions to insure completion and all estimated costs or assessments to buyer or lessee.

Ans. Tennis courts, horseshoe courts, basketball, shuffleboard and croquet courts and other outdoor recreational facilities; i.e., handball courts will be constructed during 1972. A two level clubhouse with indoor heated swimming pool and marina area will be started in 1972 and completed in 1973. If a private exclusive dock slip for the entire season is desired there will be a charge of \$50.00 per season. A second one-story clubhouse with outside swimming pool and tennis court will be completed during 1973. A private ski slope with a lodge will be started in 1972 and completed in 1973. One interior lake will be started in 1971 and completed in 1973. Two other interior lakes will be completed in 1974. A portion of the money obtained as a result of sales is placed by the developer in reserve accounts at various banks for the purpose of accumulating funds to insure the completion of the various amenities, sewerage system and central water system. With exception of the above rental fee for the exclusive use of dock facilities at the marina, there is no expense to the lot owners other than the payment of annual dues to the Property Owners Association.

10. State whether the following are now available in the subdivision: Garbage and trash collection, sewage disposal, paved streets, electricity, gas, water, telephone. If yes, state any estimated costs to buyer or lessee. If proposed or partly completed, state promised completion date, provisions to insure completion and give estimate of all costs including maintenance costs to buyer or lessee.

Ans. Garbage and trash collection will be by arrangement of property owner with a private contractor. The contractor presently servicing the area is George Kronick Disposal Service, Newfoundland, Pennsylvania, at an estimated monthly charge of \$3.00.

A central sewer system will be installed by the Developer, and the purchaser will be required to pay an annual charge of \$48.00 when available, \$60.00 when connected, until such time as the sewer system is either turned over to the lot owners association or to a public utility approved by the Pennsylvania Public Utility Commission, who will charge such rates as may be approved by the Pennsylvania Public Utility Commission. The responsibility for connections of the sewer lines from the building or residence to the sewer main furnished by Wallenpaupack Lake Estates is that of the purchaser. It is estimated the system may not be completed until late in 1974. Such rates are subject to change from time to time. Such changes will be in accordance with the Public Utility Laws, if applicable.

All streets are to be red shale, all weather surface, to be maintained as private roads from funds made available through Property Owners Association dues.

Electricity will be made available to every lot from Pennsylvania Power & Light Company, regulated by P.U.C. rates.

Water will be made available by water lines being installed by the developer within all roads and right of ways from wells and storage tanks on the development, at an estimated flat annual charge of \$24.00 when available and \$48.00 when connected, until such time as the water system is either turned over to the lot owners association or to a public utility approved by the Pennsylvania Public Utility Commission, who will charge such rates as may be approved by the P.U.C. It is estimated that the system may not be completed until late in 1974. Rates charged for such services may be subject to change from time to time. Such changes will be in accordance with the P.U.C. laws, if applicable.

Telephone service will be made available from the Bell Telephone Company of Pennsylvania at regular Pennsylvania P.U.C. rates.

There is no gas service available within the subdivision. Bottle gas is available from local suppliers.

11. Will the water supply be adequate to serve the anticipated population of the area?

Ans. The engineer has assured us that the water supply will be adequate to serve the anticipated population of the area.

12. Is any drainage of surface water, or use of fill necessary to make lots suitable for construction of a one story residential structure?

Ans. No drainage of surface water or use of fill is necessary to make any lot suitable for construction of a home.

13. State whether any of the following are currently available in the subdivision: Schools, Medical facilities (Hospitals, doctors, dentists); shopping facilities. List availability of public transportation to, and distance of facility from geographical center of subdivision.

Ans. No, because Wallenpaupack Lake Estates is a leisure or a second home development no schools, medical facilities, shopping facilities, or public transportation are available within the subdivision. All of these facilities, however, are available in the

nearby community of Newfoundland, Pennsylvania. Newfoundland is 11 miles from the development. Additional facilities are available in the communities set forth on page one, item number three.

14. Approximately how many homes were occupied as of January 15, 1972?

Ans. One home was occupied as of January 15, 1972.

15. (a) State elevation of the highest and lowest lots in the subdivision and briefly describe topography and physical characteristics of the property.

Ans. The elevation of the highest lot is 1495 feet and the elevation of the lowest lot is 1195 feet above sea level. The land has moderate slopes and some picturesque rock outcropping and is wooded throughout with hardwood trees. The soil is stony loam.

(b) State in inches the average annual rainfall and, if applicable, the average annual snowfall for the subdivision or the area in which it is located.

Ans. According to the U. S. Weather Bureau at the Wilkes-Barre Scranton Airport, the average annual rainfall is 38 inches and the average annual snowfall is about 51 inches.

(c) State temperature ranges for summer and winter, including highs, lows and means.

Ans. According to the same source, the average summer temperature is a mean of 72.4° , ranging from a high of 80.2° , to a low of 63.5° . The average winter temperature is a mean of 27.7° , ranging from a high of 33.6° , to a low of 21.7° .

16. Will any subsurface improvement, or special foundation work be necessary to construct one story residential or commercial structures on the land?

Ans. No lot will require any subsurface improvement or special foundation work for construction of single family residential homes to which the development is limited.

17. Are all lots and common facilities legally accessible by public road or street?

Ans. All lots and all common facilities are, or will be, legally accessible to every lot owner by private street open to every lot owner.

18. Has land in the subdivision been platted of record? Has it been surveyed?

Ans. Yes, the land in the subdivision has been platted of record. Each lot has not been surveyed but has been marked so that the buyer can identify the boundary lines of his lot. However, all lots will be surveyed and will have permanent pins located on all corners of said lots.

19. Are lots staked or marked so that the buyer can locate his lot(s)?

Ans. Each lot is marked so that the buyer can identify the boundary lines of his lot.

20. State whether or not the developer has experienced an operating profit or (deficit) during the last fiscal year; or is the developer a newly formed organization having no experience of profit or (deficit). If the developer has experienced an operating profit or (deficit) during the last fiscal year, the purchasers attention is directed to Item 9(a) and 9(b) of the Property Report.

Wallenpaupack Lake Estates has been selling lots since early 1971. During the year of 1971 an actual profit which could be distributed to the co-venturers was not made since the amenities planned have not been completed.

Submitted by:

WALLENPAUPACK LAKE ESTATES

1-7

SCHEDULE "A"

In this Schedule A the following words shall have the following meanings:

"SELLER" means the Grantor in and as defined in the Deed of which this Schedule is a part (including the successors and assigns of the Seller);

"PURCHASER" means the Grantee in and as defined in the Deed of which this Schedule A is a part (including the heirs, executors, administrators, successors, and assigns of the Purchaser); and

"LOT" means the premises being conveyed in and as defined in the Deed of which this Schedule A is a part.

(1) The premises hereby conveyed shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on the premises hereby conveyed other than one detached single-family dwelling, of not more than two levels, containing a minimum of 800 square feet of floor space, with a minimum of 550 square feet of floor space on the first level of a multi-floor dwelling.

(2) No building shall be located on any lot nearer than 60 feet to the center of the road on the front lot line, or nearer than 30 feet to the center of the road on any side street line, or nearer than 10 feet to an interior lot line. Exceptions may be made at the discretion of the Seller.

(3) A permanent easement for drainage and utilities is established 5 feet along side lot lines, 10 feet on rear lot lines and 10 feet along street right of way lines. A temporary construction easement for drainage and utilities is 15 feet along all lot lines.

(4) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

(5) No animal, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

(6) No lot shall be kept in an unsightly manner. A lot will be considered unsightly when the following is kept on the property in an unsanitary or dangerous manner. This includes, but is not limited to, rubbish, trash, garbage, waste, junk cars, or debris. No open fires shall be started without a written permit from the Seller. No signs for advertising purposes shall be erected or maintained on the premises or on or in any buildings on the premises. If the owner of said lot refuses to comply with this restrictive covenant, the developer and/or the Property Owners Association shall have the right to enter upon the premises and take such actions as are necessary to rectify the unsightly condition and further, the developer and/or the Property Owners Association shall have the right to charge the owner of said lot a reasonable cost for these services.

(7) No individual water supply or sewage disposal system shall be permitted on any lot or building site. Exceptions may be granted by Seller. Every owner will be required to pay annual charge for water and sewer when available, according to the rates established for these services. The systems will be owned and operated by the Property Owners Association or by a utility company approved by the Public Utility Commission. These rates may be subject to Public Utility Laws and could be increased or decreased.

(8) No building, structure or basement shall be erected upon the premises hereby conveyed without first obtaining the approval, in writing of the Seller, as to location, elevation, plans, exterior finish and design. The Seller shall approve or disapprove the above plans and design within 30 days after the same shall have been submitted.

(9) No excavation shall be made on the premises except for the purpose of building thereon and only at the time when building operations are to commence. No earth or sand shall be removed from the premises except as part of such excavation without written consent of the Seller. The building or structure must be completed within 6 months after building operations commence.

(10) Purchaser shall not clear the lot of brush or trees or do any burning of any nature whatever, except after having first obtained the approval of the Seller in writing, such approval to specify the time and manner in which such clearing or burning shall be done.

(11) An association of all property owners is to be formed by the Seller and when formed, the Purchaser covenants and agrees that he, his executors, heirs, administrators, successors and assigns, shall be bound by the by-laws, rules and regulations as may be duly formulated and adopted by such association and that they shall be subject to the payment of annual dues and assessments of the same. It being understood that the Seller, being a member of the association by virtue of the lands owned by the Seller will not be liable for such annual fees and assessments. Upon conveyance of all the common areas, all rights and powers of the Seller, as such, will vest in the Association. It is agreed that until such time as the Association is formed each lot shall be assessed and shall pay to seller, an annual maintenance charge of \$72.00 per year due in January of each year. The fixed charge of \$72.00 per lot if purchased from the sub-divider, or the payment of the property owner dues to the Property Owners Association shall first be payable on January 31st following the purchase of the lot or lots, and on the first day of February in each year thereafter. If the annual charge as to any lot is not paid when due, it shall then become a lien on such lot, subject only to matters of record on such due date. In addition, failure to pay a charge when due on any lot may result in the suspension of all or any of the rights and privileges of the member owning any interest in such lot.

(12) The portion of the lands in Wallenpaupack Lake Estates laid down on the recorded plat plan as streets shall remain available to the Seller, the Property Owners Association, and the lot owners for the purpose of ingress and egress to and from the public road and shall be made subject to the right of the Seller to install or maintain or grant the right to install or maintain water mains, sewer mains, street drains, fixtures for street lighting, telephone and electric poles, or other utilities, within the lines of such roadways.

1-9
XXX

19a

**Exhibit 2A Annexed to Proposed Amended Complaint
(Deed)**

[PHOTOSTATS]

(Opposite) 

RECORDED

NOV 2 11 17 AM '73

WAYNE COUNTY, PA.

FEES 7⁵⁰
STAMPS 134⁰⁰
134⁰⁰

This Deed,

MADE THE 21st day of October in the year of our Lord one thousand nine hundred and **seventy-three** (1973)

BETWEEN Kevin C. Boylan and Robert H. Goodman
Trustees for Wallenpaupack Lake Estates, Party of the First Part,

GRANTORS

AND

-----E. KENNIS AND MARION KENNIS, his wife, of 200 E. 33rd Street, Manhattan,
New York 10016, Parties of the Second Part,
AS TENANTS BY THE ENTIRETIES,

GRANTEEES

WITNESSETH, that in consideration of Thirteen Thousand Four Hundred Dollars-----
-----(\$13,400.00)-----Dollars,

in hand paid, the receipt whereof is hereby acknowledged; the Grantors do hereby grant and convey to the said Grantee **s** **Heirs and Assigns**,

ALL That Certain piece, parcel and tract of land situate, lying and being in the Township of Paupack...., County of Wayne, State of Pennsylvania more particularly described as follows:

Lot 169...., Section 7...., as shown on Plan of Lots, Wallenpaupack Lake Estates, dated March 23, 1971 by VEP & Co. as recorded in the Office of the Recorder of Deeds in and for Wayne County, Pennsylvania, in Plat Book 14, Page 117, said map being incorporated by reference herewith as if attached hereto.

Being a part of the same piece, parcel and tract of land which Alexander Michalski.....

et ux, et al..... by their certain deed the 3rd day of February , 1972 , and recorded in the Office of the Recorder of Deeds in and for Wayne County, Pennsylvania, in Deed Book Volume 277 at Page 261 granted and conveyed unto John R. Laurido and Karl Smergut, Trustees, the legal.....

predecessors of the Grantors herein named.....

..... Subject to the same conditions, exceptions and reservations as are contained in prior deeds forming the chain of title and subject to the further restrictions as are set forth in Schedule "A", following:

2A-1

Ex. 2A

SCHEDULE "A"

In this Schedule A the following words shall have the following meanings:

"SELLER" means the Grantor in and as defined in the Deed of which this Schedule is a part (including the successors and assigns of the Seller);

"PURCHASER" means the Grantee in and as defined in the Deed of which this Schedule A is a part (including the heirs, executors, administrators, successors and assigns of the Purchaser); and

"LOT" means the premises being conveyed in and as defined in the Deed of which this Schedule A is a part.

(1) The premises hereby conveyed shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on the premises hereby conveyed other than one detached single-family dwelling, of not more than two levels, containing a minimum of 800 square feet of floor space, with a minimum of 550 square feet of floor space on the first level of a multi-floor dwelling.

(2) No building shall be located on any lot nearer than 60 feet to the center of the road on the front lot line, or nearer than 30 feet to the center of the road on any side street line, or nearer than 10 feet to an interior lot line. Exceptions may be made at the discretion of the Seller.

(3) A permanent easement for drainage and utilities is established 5 feet along side lot lines, 10 feet on rear lot lines and 10 feet along street right of way lines. A temporary construction easement for drainage and utilities is 15 feet along all lot lines.

(4) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

(5) No animal, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

(6) No lot shall be kept in an unsightly manner. A lot will be considered unsightly when the following is kept on the property in an unsanitary or dangerous manner. This includes, but is not limited to, rubbish, trash, garbage, waste, junk cars, or debris. No open fires shall be started without a written permit from the Seller. No signs for advertising purposes shall be erected or maintained on the premises or on or in any buildings on the premises. If the owner of said lot refuses to comply with this restrictive covenant, the developer and/or the Property Owners Association shall have the right to enter upon the premises and take such actions as are necessary to rectify the unsightly condition and further, the developer and/or the Property Owners Association shall have the right to charge the owner of said lot a reasonable cost for these services.

(7) No individual water supply or sewage disposal system shall be permitted on any lot or building site. Exceptions may be granted by the Seller. Every owner will be required to pay annual charge for water and sewer when available, according to the rates established for these services. The systems will be owned and operated by the Property Owners Association or by a utility company approved by the Public Utility Commission. These rates may be subject to Public Utility Laws and could be increased or decreased.

(8) No building, structure or basement shall be erected upon the premises hereby conveyed without first obtaining the approval, in writing, of the Seller, as to location, elevation, plans, exterior finish and design. The Seller shall approve or disapprove the above plans and design within 30 days after the same shall have been submitted.

(9) No excavation shall be made on the premises except for the purpose of building thereon and only at the time when building operations are to commence. No earth or sand shall be removed from the premises except as part of such excavation without written consent of the Seller. The building or structure must be completed within 6 months after building operations commence.

(10) Purchaser shall not clear the lot of brush or trees or do any burning of any nature whatsoever, except after having first obtained the approval of the Seller in writing, such approval to specify the time and manner in which such clearing or burning shall be done.

(11) An association of all property owners is to be formed by the Seller and when formed, the Purchaser covenants and agrees that he, his executors, heirs, administrators, successors and assigns, shall be bound by the by-laws, rules and regulations as may be duly formulated and adopted by such association and that they shall be subject to the payment of annual dues and assessments of the same. It being understood that the Seller, being a member of the association by virtue of the lands owned by the Seller will not be liable for such annual fees and assessments. Upon conveyance of all the common areas, all rights and powers of the Seller, as such, will vest in the Association. It is agreed that until such time as the Association is formed each lot shall be assessed and shall pay to Seller, an annual maintenance charge of \$72.00 per year due in January of each year. The fixed charge of \$72.00 per lot if purchased from the sub-divider, or the payment of the property owner dues to the Property Owners Association shall first be payable on January 31st following the purchase of the lot or lots, and on the first day of February in each year thereafter. If the annual charge as to any lot is not paid when due, it shall then become a lien on such lot, subject only to matters of record on such due date. In addition, failure to pay a charge when due on any lot may result in the suspension of all or any of the rights and privileges of the member owning any interest in such lot.

(12) The portion of the lands in Wallenpaupack Lake Estates laid down on the recorded plat plan as streets shall remain available to the Seller, the Property Owners Association, and the lot owners for the purpose of ingress and egress to and from the public road and shall be made subject to the right of the Seller to install or maintain or grant the right to install or maintain water mains, sewer mains, street drains, fixtures for street lighting, telephone and electric poles, or other utilities, within the lines of such roadways.

(13) With regard to No. 3 above there will be a permanent easement for the installation, maintenance and repair of a sewer pipe line along the side lot line adjoining lot 170. And also there will be a permanent easement for the installation, maintenance and repair of a sewer manhole located at the back corner of lots 169, & 170.

And the said Grantors Will Warrant **SPECIALLY** the property conveyed.

In Witness Whereof, the Grantors have hereunto set their hands and seals the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WAYNE

On this, the 21st day of October A.D. 1973, before me the undersigned Officer, personally appeared Kevin C. Boylan and Robert H. Goodman Trustees, known to me (or satisfactorily proven) to be the person whose names are subscribed to the written instrument, and acknowledged that they executed the same for the purposes herein contained.

In Witness Whereof, I hereunto set my hand and official seal.
of

NOTARY PUBLIC
MARIAN NAN ROBINSON
COMMISSION EXPIRES SEPT. 15, 1975

Mariah Nan Robinson
Notary

I Hereby Certify, that the precise residence of the Grantee is 200 E. 33rd Street
Manhattan, New York



2A-3

Deed

FROM

Kevin C. Boylan

AND

Robert H. Goodman

TRUSTEES FOR

WALLENPAUPACK LAKE ESTATES

TO

J.E. KENNIS, et-ux

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF WAYNE } ss.

RECORDED ON THIS 2nd day of November, A.D. 19⁷⁵, in the
said County in Deed Book 301, Volume 2, Page 275.

Given under my hand and the seal of the said Office, the date above written.

C. F. Boylan
Recorder



BOOK 301 PAGE 281

20-9

21a

**Exhibit 2B Annexed to Proposed Amended Complaint
(Deed)**

[PHOTOSTATS]

(Opposite) 

ENTERED FOR RECORD
RECORDERS OFFICE

BOOK 301 PAGE 214

NOV 2 11 17 AM '73

WAYNE COUNTY, PA.
FEES 750.00
STAMPS 440.00

This Deed,

MADE THE 21st day of October in the year of our Lord one thousand nine hundred and seventy-three (1973)

BETWEEN Kevin C. Boylan and Robert H. Goodman
Trustees for Wallenpaupack Lake Estates, Party of the First Part,

GRANTORS

AND

E. KENNIS AND MARION KENNIS, his wife, of 200 E. 33rd Street, Manhattan,
New York 10016, Parties of the Second Part,
AS TENANTS BY THE ENTIRETIES,

GRANTEEES

WITNESSETH, that in consideration of Fourteen Thousand Dollars—
(\$14,000.00)— Dollars,

in hand paid, the receipt whereof is hereby acknowledged; the Grantors do hereby grant and convey to the said Grantee & Heirs and Assigns,

ALL That Certain piece, parcel and tract of land situate, lying and being in the Township of Paupack, County of Wayne, State of Pennsylvania more particularly described as follows:

Lot 170, Section 7, as shown on Plan of Lots, Wallenpaupack Lake Estates, dated March 23, 1971 by VEP & Co. as recorded in the Office of the Recorder of Deeds in and for Wayne County, Pennsylvania, in Plat Book 14, Page 117, said map being incorporated by reference herewith as if attached hereto.

Being a part of the same piece, parcel and tract of land which Alexander Michalski,

et ux, et al. by their certain deed the 3rd day of February, 1972, and recorded in the Office of the Recorder of Deeds in and for Wayne County, Pennsylvania, in Deed Book Volume 277 at Page 261 granted and conveyed unto John R. Laurido and Karl Smergut, Trustees, the legal

predecessors of the Grantors herein named.

Subject to the same conditions, exceptions and reservations as are contained in prior deeds forming the chain of title and subject to the further restrictions as are set forth in Schedule "A", following:

2B-1

6/ 2B

SCHEDULE "A"

In this Schedule A the following words shall have the following meanings:

"SELLER" means the Grantor in and as defined in the Deed of which this Schedule is a part (including the successors and assigns of the Seller);

"PURCHASER" means the Grantee in and as defined in the Deed of which this Schedule A is a part (including the heirs, executors, administrators, successors and assigns of the Purchaser); and

"LOT" means the premises being conveyed in and as defined in the Deed of which this Schedule A is a part.

(1) The premises hereby conveyed shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on the premises hereby conveyed other than one detached single-family dwelling, of not more than two levels, containing a minimum of 800 square feet of floor space, with a minimum of 550 square feet of floor space on the first level of a multi-floor dwelling.

(2) No building shall be located on any lot nearer than 60 feet to the center of the road on the front lot line, or nearer than 30 feet to the center of the road on any side street line, or nearer than 10 feet to an interior lot line. Exceptions may be made at the discretion of the Seller.

(3) A permanent easement for drainage and utilities is established 5 feet along side lot lines, 10 feet on rear lot lines and 10 feet along street right of way lines. A temporary construction easement for drainage and utilities is 15 feet along all lot lines.

(4) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

(5) No animal, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

(6) No lot shall be kept in an unsightly manner. A lot will be considered unsightly when the following is kept on the property in an unsanitary or dangerous manner. This includes, but is not limited to, rubbish, trash, garbage, waste, junk cars, or debris. No open fires shall be started without a written permit from the Seller. No signs for advertising purposes shall be erected or maintained on the premises or on or in any buildings on the premises. If the owner of said lot refuses to comply with this restrictive covenant, the developer and/or the Property Owners Association shall have the right to enter upon the premises and take such actions as are necessary to rectify the unsightly condition and further, the developer and/or the Property Owners Association shall have the right to charge the owner of said lot a reasonable cost for these services.

(7) No individual water supply or sewage disposal system shall be permitted on any lot or building site. Exceptions may be granted by the Seller. Every owner will be required to pay annual charge for water and sewer when available, according to the rates established for these services. The systems will be owned and operated by the Property Owners Association or by a utility company approved by the Public Utility Commission. These rates may be subject to Public Utility Laws and could be increased or decreased.

(8) No building, structure or basement shall be erected upon the premises hereby conveyed without first obtaining the approval, in writing, of the Seller, as to location, elevation, plans, exterior finish and design. The Seller shall approve or disapprove the above plans and design within 30 days after the same shall have been submitted.

(9) No excavation shall be made on the premises except for the purpose of building thereon and only at the time when building operations are to commence. No earth or sand shall be removed from the premises except as part of such excavation without written consent of the Seller. The building or structure must be completed within 6 months after building operations commence.

(10) Purchaser shall not clear the lot of brush or trees or do any burning of any nature whatsoever, except after having first obtained the approval of the Seller in writing, such approval to specify the time and manner in which such clearing or burning shall be done.

(11) An association of all property owners is to be formed by the Seller and when formed, the Purchaser covenants and agrees that he, his executors, heirs, administrators, successors and assigns, shall be bound by the by-laws, rules and regulations as may be duly formulated and adopted by such association and that they shall be subject to the payment of annual dues and assessments of the same. It being understood that the Seller, being a member of the association by virtue of the lands owned by the Seller will not be liable for such annual fees and assessments. Upon conveyance of all the common areas, all rights and powers of the Seller, as such, will vest in the Association. It is agreed that until such time as the Association is formed each lot shall be assessed and shall pay to Seller, an annual maintenance charge of \$72.00 per year due in January of each year. The fixed charge of \$72.00 per lot if purchased from the sub-divider, or the payment of the property owner dues to the Property Owners Association shall first be payable on January 31st following the purchase of the lot or lots, and on the first day of February in each year thereafter. If the annual charge as to any lot is not paid when due, it shall then become a lien on such lot, subject only to matters of record on such due date. In addition, failure to pay a charge when due on any lot may result in the suspension of all or any of the rights and privileges of the member owning any interest in such lot.

(12) The portion of the lands in Wallenpaupack Lake Estates laid down on the recorded plat plan as streets shall remain available to the Seller, the Property Owners Association, and the lot owners for the purpose of ingress and egress to and from the public road and shall be made subject to the right of the Seller to install or maintain or grant the right to install or maintain water mains, sewer mains, street drains, fixtures for street lighting, telephone and electric poles, or other utilities, within the lines of such roadways.

(13) With regard to No. 3 above there will be a permanent easement for the installation, maintenance and repair of a sewer pipe line along the side lot line adjoining lot 169. And also there will be a permanent easement for the installation, maintenance and repair of a sewer manhole located at the back corner of lots 169 & 170.

JB-2

And the said Grantors Will Warrant **SPECIALLY** the property conveyed.

In Witness Whereof, the Grantors have hereunto set their hands and seals the day and year first above written.

..... *Barrie P. Boylen*

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WAYNE

On this, the 21st day of October A.D. 1973, before me the undersigned Officer, personally appeared Kevin C. Boylan and Robert H. Goodman Trustees, known to me (or satisfactorily proven) to be the person whose names are subscribed to the written instrument, and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC
MARIAN NAN ROBINSON
COMMISSION EXPIRES SEPT. 15, 1975

Marian Monroe Robinson
Nursery

I Hereby Certify, that the precise residence of the Grantee is 200 E. 33rd Street
Manhattan, New York

Jayne C. Bogdan
Robert H. Goodman
Graytor

PAID
RENTAL TAKEN FOR DAY
MAY 10 AND 11-2-53
BY L. Kippie & Son
COLLECTOR



2B-3

Deed

FROM

Kevin C. Boylan

AND

Robert H. Goodman

TRUSTEES FOR

WALLENPAUPACK LAKE ESTATES

TC

E. KENNIS, et-ux

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WAYNE } ss.

OF, Second, On this 2nd day of *November* A.D. 19⁰³, in the
Recorder's Office, for the said County in Deed Book 30, Volume
Page 294.

Recorded in the County in Dea Book 2, Volume 2, on the 2 day and the year 1881 and the date above written.

28th May Recorder



BOOK 3001 PAGE 2777 200-4

23a

**Exhibit 3A Annexed to Proposed Amended Complaint
(Copy of Sales Agreement)**

[PHOTOSTAT]

(Opposite) 

THIS AGREEMENT, dated the 12 day of July, 1973, between
WALLENPAUPACK LAKE ESTATES, Wayne County, Pennsylvania hereinafter called "Seller" and

Name EDWARD AND MARION KENNIS (THIS WIFE)

Street 200 E. 33rd St.

(Name in which title is to be taken)

Phone 212-686-3253

City MANHATTAN

State N. Y.

Zip 10017

hereinafter called Purchaser in consideration of the mutual covenants contained herein agree as follows:

WITNESSETH: Seller agrees to sell and Purchaser agrees to buy, for the price set out below

Lot 169, Section 7

Wallenpaupack Lake Estates Wayne County Pennsylvania

TERMS OF SALE:

Total Cash Price \$ 13400.00

2% REALTY TAX	<u>626.80</u>
RECORDING FEES	<u>14.00</u>
TITLE INSURANCE	<u>87.50</u>
TOTAL	<u>369.30</u>

The purchaser will make a down payment of \$ 3600.00 of which \$ 100.00 is paid herewith

and the balance of the down payment \$ 3500.00 is due and payable within 7 days from the date hereof.

The purchaser agrees to pay the Seller the balance of the purchase price in 94 monthly installments of
\$ 177.75 commencing on the 1st day of DECEMBER 1973, and continuing on even
date of each successive month with one last payment of \$ — 0 — in accordance with a judgment note
executed by the Purchaser and made a part hereof.

On payment of the aforesaid purchase moneys and all other amounts and charges required to be paid by Purchaser
under this agreement, and upon delivery of the judgment note as herein provided for, the Seller shall furnish a special
warranty deed to the Lot, conveying good and marketable title to the Purchaser free of all liens and encumbrances except
as herein stated. Purchaser will abide by and perform each of the covenants, conditions, easements and servitudes contained in
the chain of title to said Lot or recorded with the deed of dedication and plat including said Lot or recorded in the Office of
the Register & Recorder, Wayne County, Honesdale, Pennsylvania.

Purchaser agrees to pay all recording costs and realty transfer taxes and all real estate taxes accruing after the date of this
agreement. Purchaser, by signing this Agreement, does further acknowledge a receipt of a completed and fully executed copy
of a personal loan note which contains and sets forth disclosures as required by the "Federal Truth in Lending Act." Purchaser
agrees to pay a water availability charge at the rate of \$2.00 per month per lot when available and a minimum of \$4.00
when used and a sewer availability charge at the rate of \$4.00 per month when available and \$5.00 a month when used. These
rates are subject to change.

Purchaser assumes all risk of loss, injury or damage by any means whatsoever from and after the date hereof to said
Lot to persons or property present thereon.

Purchaser hereby applies for membership in the Wallenpaupack Lake Estates Property Owners Association, Inc. If
accepted for membership, Purchaser shall pay to the Association during January of each year a maintenance fee of \$72.00 or
such other sum as may be determined. If Purchaser is not accepted for membership in the Association because of a prior sale
of the lot or if Seller is not reasonable satisfied of Purchaser's credit standing, all monies paid by Purchaser to Seller shall
be refunded and this Agreement shall be null and void, and Purchaser hereby waives and releases any or all rights whatsoever
against Wallenpaupack Lake Estates and their officers, representatives, successors or assigns.

Seller warrants that each lot will have at least one side contiguous to a street or road with each lot purchaser having
ingress and egress thereto and therefrom.

The Purchaser has the option to void this Agreement if he did not receive a Property Report prepared pursuant to the
rules and regulations of the U. S. Department of Housing and Urban Development, in advance of, or at the time of his
signing this Agreement. The Purchaser has the right to revoke this Agreement within 48 hours after signing this Agreement
if he did not receive the property report at least 48 hours before signing this Agreement.

Notwithstanding anything in the Agreement to Purchase to the contrary any purchaser from the State of New York
shall have a minimum grace period of 60 days after the due date of any payment before the purchaser may be declared in
default and shall provide that at least 14 days before the expiration of said grace period, the subdivider shall notify the
purchaser in writing, by certified or registered mail of the amount then due under the contract and the exact expiration
date of said grace period and that the purchaser shall not be deemed in default in the payment of any installment due
under the contract unless and until such notice shall have been given.

Purchaser has the option to void the contract or agreement if he does not receive a property report prepared pursuant
to the rules and regulations of the Office of Interstate Land Sales Registration, U. S. Department of Housing and Urban
Development, in advance of, or at the time of, his signing the contract or agreement; and purchaser has the right to revoke
the contract or agreement within 48 hours after signing the contract or agreement if he did not receive the property report
at least 48 hours before signing the contract or agreement.

Purchaser acknowledges that he has received a copy of the New York offering statement which is hereby incorporated
and made a part of this contract and this contract shall survive delivery of the deed.

PURCHASER FURTHER HEREBY ACKNOWLEDGES RECEIPT OF A PROPERTY REPORT PREPARED
PURSUANT TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT, THAT HE HAS READ AND UNDER-
STANDS SUCH REPORT, THAT HE HAS INSPECTED THE LOT TO BE PURCHASED HEREBY AND STIPU-
LATES BY SIGNING THIS AGREEMENT THAT THE REVOCATION AUTHORITY PROVIDED IN SUCH ACT
SHALL NOT APPLY.

This Agreement shall be binding on and exercisable by the respective heirs, executors, administrators, successors, and
assigns of the Seller and the Purchaser, except that the Purchaser may not assign this agreement without the written consent
of the Seller. Formal tender of deed and balance of purchase price is hereby waived.
The seller and purchaser agree that this agreement, installment sale and security agreement, and judgment note constitute the
entire agreement between the parties and contain all the representations and warranties made by the seller in connection
with this transaction.

The covenants and agreements of purchaser and the rights of the seller shall survive the delivery of a deed and remain in full
force and effect as long as purchaser own a lot at Wallenpaupack Lake Estates.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and date written above.

PURCHASER WARRANTS THAT PURCHASER IS (ARE):
(A) SINGLE, (B) HUSBAND AND WIFE, LEGALLY
MARRIED EACH TO THE OTHER.

WALLENPAUPACK LAKE ESTATES

Authorized Signatures

BEST COPY AVAILABLE

25a

**Exhibit 3B Annexed to Proposed Amended Complaint
(Copy of Sales Agreement—Lot 170)**

[PHOTOSTAT]

(Opposite) 

200
THIS AGREEMENT, dated this 21 day of OCTOBER, 1973, between
WALLENPAUPACK LAKE ESTATES, Wayne County, Pennsylvania hereinafter called "Seller" and

Name EDWARD AND MARION KENNIS (UR WIFE)
(Name in which title is to be taken)

Street 200 E. 33rd ST. Phone 212-186-2253

City MARILTON State N.Y. Zip 10016

hereinafter called Purchaser in consideration of the mutual covenants contained herein agree as follows:

WITNESSETH: Seller agrees to sell and Purchaser agrees to buy, for the price set out below

Lot 170, Section 7, Wallenpaupack Lake Estates Wayne County Pennsylvania.

PA. REALTY TAX 270 4230.76

RECLADING FEES 7.55

TITLE INSURANCE 87.50

Total Cash Price \$ 14,000.00
The purchaser will make a down payment of \$ 2,800.00 of which \$ 100.00 is paid herewith
and the balance of the down payment \$ 2,700.00 is due and payable within 7 days from the date hereof.

The purchaser agrees to pay the Seller the balance of the purchase price in 84 monthly installments of
\$ 73.95 commencing on the 1st day of DECEMBER 19 73, and continuing on even
date of each successive month with one last payment of \$ 0 in accordance with a judgment note
executed by the Purchaser and made a part hereof.

On payment of the aforesaid purchase moneys and all other amounts and charges required to be paid by Purchaser
under this agreement, and upon delivery of the judgment note as herein provided for, the Seller shall furnish a special
warranty deed to the Lot, conveying good and marketable title to the Purchaser free of all liens and encumbrances except
as herein stated. Purchaser will abide by and perform each of the covenants, conditions, easements and servitudes contained in
the chain of title to said Lot or recorded with the deed of dedication and plat including said Lot or recorded in the Office of
the Register & Recorder, Wayne County, Honesdale, Pennsylvania.

Purchaser agrees to pay all recording costs and realty transfer taxes and all real estate taxes accruing after the date of this
agreement. Purchaser, by signing this Agreement, does further acknowledge a receipt of a completed and fully executed copy
of a personal loan note which contains and sets forth disclosures as required by the "Federal Truth in Lending Act." Purchaser
agrees to pay a water availability charge at the rate of \$2.00 per month per lot when available and a minimum of \$4.00
when used and a sewer availability charge at the rate of \$4.00 per month when available and \$5.00 a month when used. These
rates are subject to change.

Purchaser assumes all risk of loss, injury or damage by any means whatsoever from and after the date hereof to said
Lot to persons or property present thereon.

Purchaser hereby applies for membership in the Wallenpaupack Lake Estates Property Owners Association, Inc. If
accepted for membership, Purchaser shall pay to the Association during January of each year a maintenance fee of \$72.00 or
such other sum as may be determined. If Purchaser is not accepted for membership in the Association because of a prior sale
of the lot or if Seller is not reasonable satisfied of Purchaser's credit standing, all monies paid by Purchaser to Seller shall
be refunded and this Agreement shall be null and void, and Purchaser hereby waives and releases any or all rights whatsoever
against Wallenpaupack Lake Estates and their officers, representatives, successors or assigns.

Seller warrants that each lot will have at least one side contiguous to a street or road with each lot purchaser having
ingress and egress thereto and therefrom.

The Purchaser has the option to void this Agreement if he did not receive a Property Report prepared pursuant to the
rules and regulations of the U. S. Department of Housing and Urban Development, in advance of, or at the time of his
signing this Agreement. The Purchaser has the right to revoke this Agreement within 48 hours after signing this Agreement
if he did not receive the property report at least 48 hours before signing this Agreement.

Notwithstanding anything in the Agreement to Purchase to the contrary any purchaser from the State of New York
shall have a minimum grace period of 60 days after the due date of any payment before the purchaser may be declared in
default and shall provide that at least 14 days before the expiration of said grace period, the subdivider shall notify the
purchaser in writing, by certified or registered mail of the amount then due under the contract and the exact expiration
date of said grace period and that the purchaser shall not be deemed in default in the payment of any installment due
under the contract unless and until such notice shall have been given.

Purchaser has the option to void the contract or agreement if he does not receive a property report prepared pursuant
to the rules and regulations of the Office of Interstate Land Sales Registration, U. S. Department of Housing and Urban
Development, in advance of, or at the time of, his signing the contract or agreement; and purchaser has the right to revoke
the contract or agreement within 48 hours after signing the contract or agreement if he did not receive the property report
at least 48 hours before signing the contract or agreement.

Purchaser acknowledges that he has received a copy of the New York offering statement which is hereby incorporated
and made a part of this contract and this contract shall survive delivery of the deed.

PURCHASER FURTHER HEREBY ACKNOWLEDGES RECEIPT OF A PROPERTY REPORT PREPARED
PURSUANT TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT, THAT HE HAS READ AND UNDER-
STANDS SUCH REPORT, THAT HE HAS INSPECTED THE LOT TO BE PURCHASED HEREBY AND STIPU-
LATES BY SIGNING THIS AGREEMENT THAT THE REVOCATION AUTHORITY PROVIDED IN SUCH ACT
SHALL NOT APPLY.

This Agreement shall be binding on and exercisable by the respective heirs, executors, administrators, successors, and
assigns of the Seller and the Purchaser, except that the Purchaser may not assign this agreement without the written consent
of the Seller. Formal tender of deed and balance of purchase price is hereby waived.

The seller and purchaser agree that this agreement, installment sale and security agreement, and judgment note constitute the
entire agreement between the parties and contain all the representations and warranties made by the seller in connection
with this transaction.

The covenants and agreements of purchaser and the rights of the seller shall survive the delivery of a deed and remain in full
force and effect as long as purchaser own a lot at Wallenpaupack Lake Estates.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and date written above.

PURCHASER WARRANTS THAT PURCHASER IS (ARE):
(A) SINGLE; (B) MARRIED AND WIFE, LAWFULLY
MARRIED EACH TO THE OTHER.

WALLENPAUPACK LAKE ESTATES

27a

**Exhibit 3C Annexed to Proposed Amended Complaint
(Copy of Promissory Note)**

[PHOTOSTAT]

(Opposite) 

سیاست

Oct. 27

1972

after date Oct. 26/73 promise to

pay to the order of WALLENPAUPACK LAKE ESTATES

SEVEN HUNDRED AND FORTY-FOUR ~~56~~ Dollars

Payable at

Without defalcation, value received, with interest.

And further, _____ do hereby empower a y Attorney of any Court of Record within the United States or elsewhere to appear for _____ and after one or more declarations filed confess judgment against _____ as of any term for the above sum with Costs of suit and Attorney's commission of _____ percent for collection and release of all errors, and without stay of execution and inquisition and extension upon any Levy on real estate is hereby waived and condemnation agreed to and the exemption of personal property from Levy and sale on any any execution hereon, is also hereby expressly waived, and no benefit of exemption be claimed under and by virtue of any exemption law now in force or which may be hereafter passed.

(SEAL)

No. Due 4/01/1973 15 MON. 10 AM (SEAL)

29a

**Exhibit 3D Annexed to Proposed Amended Complaint
(Copy of Promissory Note)**

[PHOTOSTAT]

(Opposite) 

3.26.68 30
68

October 21

1973

— after date 10/14/73 promise to
the order of WALLENPAUPACK LAKE ESTATES
17 THOUSAND AND TWO HUNDRED 50 Dollars
le at

it defalcation, value received, with interest

urther, do hereby empower any Attorney of Record within the United States
are to appear for and enter one or more declarations filed confess judgment against
as of any term for the above sum with Costs of suit and Attorney's commission of
percent for collection and release of all errors, and without stay of execution and inquisition and
upon any Levy on real estate is hereby waived and condemnation agreed to and the exemption of personal
from Levy and sale on any any execution hereon, is also hereby expressly waived, and no benefit of exemption
under and by virtue of any exemption law now in force or which may be hereafter passed.

hand and seal

(SEAL)

Due 10/14/73

31a

**Exhibit 3E Annexed to Proposed Amended Complaint
(Copy of Personal Loan Note)**

[PHOTOSTAT]

(Opposite) 

PERSONAL LOAN NOTE AND DISCLOSURE STATEMENT

SECURITY INTEREST AND LIEN — A security interest is granted to W. L. E. or Assignee in the Collateral described below in the body of the note and also the holder of this note may, in accordance with the exercise of the power to confess judgment granted below, acquire a security interest and judgment lien against all real and personal property of every kind and description, now owned or hereinafter acquired by Borrower, excepting principal residence of Borrower.

DELINQUENCY AND PREPAYMENT CHARGES — In the event of delinquency, Borrower is required to pay a single delinquency charge for each installment past due for fifteen (15) days or more of 5% or \$2.50 whichever is less or pay interest of 1% per month for each extension in excess of fifteen (15) days. In the event of suit there will be attorneys fees of 15% plus costs if referred to an attorney for collection.

In the event of prepayment, the finance charge will be prorated pursuant to the Rule of 78's subject, however, to a minimum charge of \$5.00 for the loan and further provided that in any event, no refund shall be required in an amount less than \$1.00.

\$30063.60

P. L. No. _____ Date _____ Undersigned, jointly and severally if more than one, promise to pay to the order of WALLENPAUPACK LAKE ESTATES

the sum of THIRTY THOUSAND Sixty THREE AND 60 / 100 100 Dollars in 84 successive monthly installments of \$ 357.90 each and a final monthly installment of \$ 10 — the first installment to be payable on

DECEMBER 1, 1973, and the remaining installments to be payable on a like day of each successive month thereafter. Undersigned further promise and agree to pay, upon demand of the holder and to the extent permitted by law, a single delinquency charge of \$2.50 or 5%, whichever is less of each installment more than fifteen (15) days in arrears. Such delinquency charges shall become at once due and payable after the fifteenth-day (15) period, or may be collected with the last installment.

AS SECURITY FOR THE PAYMENT OF THIS NOTE AND FOR ALL OTHER LIABILITIES OF ANY UNDERSIGNED TO PAYEE, now existing or hereafter incurred, in whole or unwholly, direct or contingent, primary, secondary, sole, joint or several, or jointly or severally with any other person or persons, herein called the "Liabilities", the Undersigned pledges with Payee and/or grants it a security interest in the following property:

LOTS 169 AND 170 SECTION 7 WALLENPAUPACK LAKE ESTATES

TOGETHER with all additions and substitutions hereafter pledged with Payee and in which the latter may have a security interest (herein called the "Collateral"). AS FURTHER SECURITY for the Liabilities, Payee is hereby given a lien on and a security interest in all property of each of the Undersigned now or hereafter in Seller's possession, including but not limited to, any balance or interest in any deposit, trust, or agency account; and Payee shall have the same rights to such property as it has in the collateral.

Each of the Undersigned do hereby irrevocably authorize and empower the Prothonotary or Clerk or any attorney of any court of record within the United States, or elsewhere, to appear for them, or any of them, and to confess judgment against them, or any of them, at any time in favor of the holder hereof, as of any term, with or declaration filed, for a sum equal to the face amount of this Note, with costs of suit, and with 15% added as attorney's collection fees; and with respect to any judgment entered hereon, each of the Undersigned waives, in regard to any real or personal property levied upon, any right of inquisition and agrees that any real estate shall be voluntarily condemned and may be sold under a Writ of Execution, the right of appeal, and does release all errors. Such power shall not be exhausted by one exercise, whether or not any such exercise shall be held by any court to be valid, voidable or void but judgment may be confessed from time to time as often as any sum or sums may be due hereunder. Waiver of any default shall not create or constitute a security interest in or a lien upon the Undersigned's principal residence described below and hereby expressly releases such real property and deliver without cost to the Borrower any further instruments which may be required to effectuate the above.

Principal Residence Property Owned or Expected to be Acquired by Borrower: 200 E. 33rd ST. MANHATTAN NY
 Number _____ Street _____ City _____ County _____ State _____

Principal Residence Property Owned or Expected to be Acquired by Co-Maker: (SAME)
 Number _____ Street _____ City _____ County _____ State _____

This note is given in accordance with and is subject to all terms and conditions of a Contract to Purchase, between WALLENPAUPACK LAKE ESTATES and the Undersigned, entered into on OCT 21 1973.

In the event that any installment of this note is not fully paid as herein specified, a minimum grace period of 60 days after the due date of such payment is to be given to the Undersigned before the holders or owners of this note may declare it in default and such holders or owners of said note must at least 14 days before the expiration of said 60 day grace period, notify the Undersigned in writing, by certified or registered mail, of the amount then due on said note and the exact date of said grace period and the Undersigned shall not be deemed to be in default in the payment of any installment due hereunder unless and until such notice shall have been given.

NOTICE OF PROPOSED CREDIT INSURANCE
 The Signer(s) of this contract hereby take(s) notice that group credit life insurance coverage and/or group credit accident and health insurance coverage will be applicable to this contract if so marked on the front of this contract and each such type of coverage will be written by the insurance company named. This insurance, subject to acceptance by the insurer covers only the person signing the request for such insurance. The amount of charge is indicated for each type of credit insurance to be purchased. The term of insurance will commence as of the date the indebtedness is incurred and will expire on the original scheduled maturity date of the indebtedness. Subject to acceptance by the insurer and within 30 days, there will be delivered to the insured debtor a certificate of insurance more fully describing the insurance. In the event of prepayment of the indebtedness, a refund of insurance charges will be made where due.

This note is subject to the additional provisions set forth on the reverse side hereof, the same being incorporated herein by reference.
 H OF THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE AND DISCLOSURE STATEMENT.

Jennings
 Co-Maker's Signature

(SEAL)

Marie Kenney
 Borrower's Signature

(SEAL)

70 E. 33rd ST. MANHATTAN, NY 200 E. 33rd ST. MANHATTAN, NY
 Address _____

(SEAL)

(SEAL)

Co-Maker

Co-Maker

Address

Address

NOTICE: — ALL SHADED AREA IS FEDERAL TRUTH IN LENDING DISCLOSURE.

Ref 35

33a

**Exhibit 4 Annexed to Proposed Amended Complaint
(Copy of letter of November 7, 1973 Joseph Grainger
to Edward Kennis)**

[PHOTOSTAT]

(Opposite )

LAW OFFICE OF
JOSEPH GRAINGER
26 BROADWAY
NEW YORK, N.Y. 10004

JOSEPH GRAINGER
CELESTINO TESORIERO

(212) 747-1198

November 7, 1973

Mr. Edward Kennis
Universal Maritime Service Corp.
One Broadway
New York, New York 10004

Dear Ed:

I spoke with Mr. Edward Barnes today. Accordingly, you and the development representative should arrange, as agreed, for the following amendments of your contract.

1. That you are not responsible for assessments made, but not collected, prior to your taking title.
2. That the Federal (H.U.D.) report or statement is deemed incorporated in your contract.
3. That your liability for injury prior to building on the property is eliminated.
4. That, as you request, if you wish to begin building on October 1, 1974 and if for reasons beyond your control or that of your selected builder, but because of the fact that sewers, roads, utilities cannot be expected to be available at the estimated time of completion, no matter whose fault, you are entitled to a refund of your purchase price. Naturally, if you wish you could sell to a third party, but you can demand refund of your payments.

This amendment should include a reference to the money owing from the escrow account, established for New York residents, or a separate escrow account.

Sincerely,


JOSEPH GRAINGER

JG:ls

flat fees

136-27 consult me the 1st of February 1974 11354

35a

**Exhibit 5 Annexed to Proposed Amended Complaint
(Letter dated November 9, 1973 Edward Kennis to
Fred Roberts)**

[PHOTOSTAT]

(Opposite) 

Edward Kennis

ONE BROADWAY

NEW YORK, NEW YORK

10004

November 9, 1973

Mr. Fred Roberts
Wallenpaupack Lake Estates
55 Northern Blvd.
Great Neck, N.Y. 11021

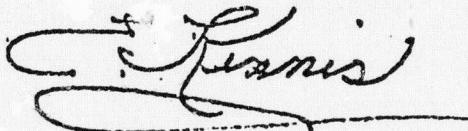
Dear Mr. Roberts:

I enclose a copy of letter from my Attorney,
Joseph Grainger, listing a number of amendments to
be incorporated into my contract.

You will notice that Mr. Grainger spoke with
your Mr. Edward Barnes on November 7 and discussed
and agreed on the above.

Thank you for your assistance in this matter.

Very truly yours,



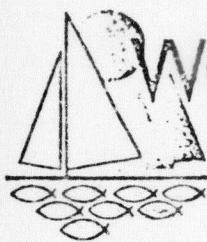
Ex 5

37a

**Exhibit 6 Annexed to Proposed Amended Complaint
(Letter dated December 24, 1973, F. H. Roberts to
Edward Kennis)**

[PHOTOSTAT]

(Opposite) 



Wallenpaupack lake estates

p. o. box 67/greentown, pennsylvania 18426
telephone: area code 717—689-2628

December 24, 1973

Mr. Edward Kennis
200 E. 33 St.
Manhattan, New York 10016

Dear Mr. Kennis:

Please accept this letter as confirmation of the fact that your contract with us is amended as requested. The changes set forth in your letter dated November 7, 1973 are hereby incorporated into your contract.

The only item needing clarification is clause number 3. I believe the interpretation set forth that you have no liability to possible injury prior to taking title. If there is any question in this regard, please feel free to discuss it with me.

Wallenpaupack Lake Estates does maintain an escrow deposit in New York State as a guarantee of performance, our present balance is one million dollars. The accounts are maintained in the following banks; Flushing Federal Savings & Loan Assoc., Chase Manhattan Bank and Bankers Trust Company all in Flushing, Queens County, New York. Another account is maintained in the Empire Bank of Middletown, New York. I trust this is the information your desire.

Sincerely yours,

F. H. Roberts
Director of Sales

GOLIE

39a

Exhibit 7 Annexed to Proposed Amended Complaint

**(Letter dated September 17, 1974, Addressed to
F. H. Roberts from Attorneys for Plaintiffs)**

[PHOTOSTAT]

(Opposite) 

September 17, 1974

Wallenpaupack Lake Estates
P.O. Box 67
Greentown, Pa. 18426

Attn: F.H. Roberts

Re: Lots 169 & 170
Section 7

Dear Sirs:

We represent Mr. & Mrs. Edward Kennis with reference to their purchase of the above property.

Our clients have advised that the sewage system, roads and utilities in connection with the above property are not and will not be completed by October 1, 1974.

Pursuant to your agreement with our clients, if these systems were not completed by October 1, 1974 Mr. & Mrs. Kennis have the right to demand the return of the purchase price.

Since it is obvious that the contract condition will not and cannot be met by October 1, 1974 our clients hereby exercise their rights pursuant to the agreement and make demand for the return of the purchase price for the above property.

Our clients will execute whatever documents necessary for transfer of the title and trust that this matter will be attended to as expeditiously as possible.

Very truly yours,

GRAINGER & TESORIERO
BY:

CELESTINO TESORIERO

GT:jm

cc: E. Kennis

Ex. 7

41a

Exhibit 8 Annexed to Proposed Amended Complaint

**(Letter dated October 2, 1974, F. H. Roberts to
Attorneys for Plaintiffs)**

[PHOTOSTAT]

(Opposite) 



p. o. box 109, hamlin, pennsylvania 18431
XXXX XXXXX XXXXX XXXXX XXXXX XXXXX
telephone area code 717-639-2628

October 2, 1974

Grainger & Tesoriero
17 Battery Place North
New York, New York
Attn: Celestino Tesoriero

RE: Edward Kennis
Lots 169 & 170
Section 7

Dear Mr. Tesoriero,

In regard to your letter of September 17, 1974, I believe an error has been made by Mr. Kennis. The water lines and sewer lines as well as the roads and utilities, in connection with the above property, will be completed as previously agreed upon by the end of 1976.

If there are any further questions in regard to this matter, please do not hesitate in calling me.

Very truly yours,

F. H. Roberts
Director of Sales

FHR/jd

Ex. 8

43a

44a

**Exhibit 9 Annexed to Proposed Amended Complaint
(Judgment)**

[PHOTOSTAT]

(Opposite) 

CERTIFICATE

(Act of June 25, 1937)

I hereby certify that the precise residence address of

Merchants National Bank

the within name judgment creditor is

702 Hamilton St.

Allentown, Pa.

and the last known address of the within name defendant is

200 E. 33rd Street

Manhattan, New York

Herrick E. Gaddes
Atty. for Plaintiff

NOV 2 11 18 AM '73

WAYNE COUNTY
PROTHONOTARY AND
CLERK OF COURTS

No. 250 October Term 1973

Merchants National Bank

702 Hamilton St.
Allentown, Pa.

RESIDENCE:

V

E. Kennis and

✓ Marion Kennis, his wife.

Filed *November 2 1973*

Prot. and Tax \$6.5

Paid by Plaintiff or ~~Defendant~~

Attorney Fee \$3.0

To the Prothonotary:

Enter judgment on accompanying note
in the sum of \$ 30,063.60

with interest ~~10%~~ included.

Herrick E. Gaddes
Atty. for Plaintiff

P. C.

Ex. 9

45a

Exhibit 10 Annexed to Proposed Amended Complaint

**(Letter dated February 6, 1976, from Merchants
National Bank of Allentown to Attorney for
Plaintiffs)**

[PHOTOSTAT]

(Opposite) 



THE MERCHANTS NATIONAL BANK OF ALLENTEWON

702 HAMILTON STREET / ALLENTEWON, PENNA. 18101

February 6, 1976

Robert P. Whelan
19 Rector St., 27th Floor
New York, NY 10005

Re: Account No. Edward Kennis
323-83879

This will acknowledge receipt of your request for
a payoff on the above loan.

Our records indicate the present balance is
\$ 20,400.30 and the payoff is \$ 16,348.33 until
March 5, 1976.

If we may be of further assistance, please do
not hesitate to contact us.

Very truly yours,

Bernadine Urbanas (Miss)
Supervisor
Installment Loan Department

BU:jk

Ex. 10

47a

**Memorandum Decision and Order of Frankel, U.S.D.J.
dated March 19, 1976**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD KENNIS and MARION KENNIS,
Plaintiffs,

—against—

WALLENPAUPACK LAKE ESTATES,
Defendant.
#44099
75 Civ. 1550

FRANKEL, D.J.

Plaintiffs have moved for reargument of the order dismissing the complaint and for leave to amend in an effort to state a federal claim. The motion to reargue is summarily denied. The second motion has merited close attention, but it too is found on balance to be insufficient.

Granting the liberality with which amendments to pleadings are allowed, this remains, as plaintiffs originally perceived, a case arising essentially under state rather than federal law. The proposed amendment does not upon analysis appear to state a claim under the federal statute plaintiffs would propose tardily to invoke. Even if the

*Memorandum Decision and Order of Frankel, U.S.D.J.
dated March 19, 1976*

court is wrong in this, the supposed claim under the Interstate Land Act is cognizable in state court, where this case so plainly belongs.

The prayer for leave to amend is an appeal to discretion, and plaintiffs have no strong basis for such an appeal. Allowed to amend their complaint months ago, they did not make the change now urged. The history reflects vividly the character of this post-dismissal motion as a last, improbable afterthought.

Both motions are denied. So ordered.

Dated, New York, New York
March 19, 1976

MARVIN E. FRANKEL
U.S.D.J.

United States Court of Appeals
376-Affidavit of Service by Mail for the Second Circuit The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

Edward Kennis and Marion Kennis
Plaintiffs-Appellants
against
Wallenpaupack Lake Estates
Defendant-Appellee
On Appeal from the United States District Court for the
Southern District of New York

State of New York, County of New York, ss.:

Raymond J. Braddick,
agent for Robert P. Whelan Esq., being duly sworn deposes and says that he is
the attorney
for the above named Plaintiffs-Appellants herein. That he is over
21 years of age, is not a party to the action and resides at Levittown, New York

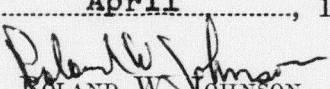
That on the 23rd. day of April, 1976, he served the within
Brief and Appendix

upon the attorneys for the parties and at the addresses as specified below

Benjamin B. Wesley Esq.
Attorney for defendant-Appellee
86-14 Forest Parkway
Woodhaven, New York 11421

by depositing 3 copies of each
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly maintained by the United States Government at
90 Church Street, New York, New York
directed to the said attorneys for the parties as listed above at the addresses aforementioned, that being the addresses within the state designated by them for that purpose, or the places where they then kept offices between which places there then was and now is a regular communication by mail.

Sworn to before me, this 23rd.
day of April, 1976.


ROLAND W. JOHNSON,
Notary Public, State of New York
No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1977

